

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY

IN RE:

CHAPTER 11

LICKING RIVER MINING, LLC, *et al.*

CASE NO. 14-10201
(ASHLAND, LONDON, &
LEXINGTON DIVISIONS)

DEBTORS IN POSSESSION

JOINTLY ADMINISTERED

IN RE:

CHAPTER 11

HARLAN COUNTY MINING, LLC
OAK HILL COAL, INC.
SANDLICK COAL COMPANY, LLC
U.S. COAL MARKETING, LLC

CASE NO. 14-52501
CASE NO. 14-52502
CASE NO. 14-52503
CASE NO. 14-52504
(LEXINGTON DIVISION)

DEBTORS IN POSSESSION

JOINT ADMINISTRATION
APPLICATION PENDING

**APPLICATION TO EMPLOY DELCOTTO LAW GROUP PLLC AS GENERAL
LOCAL COUNSEL FOR HARLAN COUNTY MINING, LLC, OAK HILL COAL, INC.,
SANDLICK COAL COMPANY, LLC, AND U.S. COAL MARKETING, LLC**

Come Harlan County Mining, LLC, Oak Hill Coal, Inc., Sandlick Coal Company, LLC, and U.S. Coal Marketing, LLC, as debtors and debtors in possession (collectively, the “Additional Debtors”), and Licking River Resources, Inc., Licking River Mining, LLC, S. M. & J., Inc., J.A.D. Coal Company, Inc., Fox Knob Coal Co., Inc., and U.S. Coal Corporation, as jointly-administered debtors and debtors in possession (collectively, the “Jointly Administered Debtors,” and together with the Additional Debtors, the “Debtors”), and respectfully request the entry of an order, pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Fed. R. Bankr. P. 2014 and 6003, authorizing the Additional Debtors to employ DelCotto Law Group PLLC (“DLG”) as their general local bankruptcy counsel, effective as of the commencement of

the Additional Debtors' bankruptcy cases (the "Application"). In support of this Application, the Debtors submit the Affidavit of Laura Day DelCotto, Esq., a member of DLG, attached hereto as Exhibit A (the "Affidavit"). In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. On May 22, 2014, an involuntary petition seeking relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") was filed against Licking River Mining, LLC ("LR Mining"). On May 23, 2014, involuntary petitions seeking relief under Chapter 11 of the Bankruptcy Code were filed against Licking River Resources, Inc. ("LRR") and Fox Knob Coal Co., Inc. ("Fox Knob"). On June 3, 2014, an involuntary petition seeking relief under Chapter 11 of the Bankruptcy Code was filed against S. M. & J., Inc. ("SM&J"). On June 4, 2014, an involuntary petition seeking relief under Chapter 11 of the Bankruptcy Code was filed against J.A.D. Coal Company, Inc. ("JAD").¹ On June 10, 2014, an involuntary petition seeking relief under Chapter 11 of the Bankruptcy Code was filed against U.S. Coal Corporation ("U.S. Coal"). The foregoing involuntary petitions are collectively referred to as the "Involuntary Petitions," and the dates upon which the Involuntary Petitions were filed are collectively referred to as the "Commencement Dates."

2. On June 12, 2014, the Court entered an order for relief in each of the Subsidiary Debtors' bankruptcy cases (the "Subsidiary Relief Date"). On June 27, 2014, the Court entered an order for relief in U.S. Coal's bankruptcy case (the "U.S. Coal Relief Date," and together with the Subsidiary Relief Date, the "Relief Dates").

¹ LR Mining, LRR, Fox Knob, SM&J, and JAD are collectively referred to as the "Subsidiary Debtors."

3. On June 13, 2014, the Court entered an Order [Doc 91]² directing the joint administration of the Subsidiary Debtors' bankruptcy cases. On June 27, 2014, the Court entered an Order [U.S. Coal Doc 48] directing that the bankruptcy case of U.S. Coal be jointly administered with the Subsidiary Debtors' bankruptcy cases. Contemporaneously herewith, the Debtors are filing a motion requesting that the Additional Debtors' bankruptcy cases be jointly administered with the Jointly-Administered Debtors' bankruptcy cases.

4. No trustee or examiner has been appointed in the Chapter 11 cases of any of the Debtors. The Official Committee of Unsecured Creditors (the "Committee") was appointed in the Jointly-Administered Debtors' bankruptcy cases on June 18, 2014 [See Doc 145].

5. On September 15, 2014, the Committee filed a Motion [Doc 468] requesting, among other things, that the Court compel the Jointly-Administered Debtors to file Chapter 11 petitions for the Additional Debtors, which are subsidiaries of U.S. Coal.

6. On October 27, 2014, the Court entered an Order [Doc 574] which authorized, compelled, and directed the Jointly-Administered Debtors to file Chapter 11 petitions for the Additional Debtors. Contemporaneously with the filing of this Motion, voluntary Chapter 11 petitions were filed for each of the four Additional Debtors as directed by the Court.

7. The Debtors all continue to operate their businesses and manage their properties as debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

8. This Court has jurisdiction over all of the Debtors' Chapter 11 cases under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

² All ECF numbers contained herein refer to pleadings filed in the lead case of *In re Licking River Mining, LLC*, Case No. 14-10201 unless otherwise specifically noted.

9. The Debtors all maintain their principal places of business in Fayette County, Kentucky. Accordingly, venue for all of the Debtors' Chapter 11 cases is proper in this District under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

10. Information regarding the Debtors' businesses and operations can be found in the Declaration of John Collins in Support of the Debtors' First Day Pleadings [Doc 13] and the Declaration of John Collins Regarding the Motion of the Official Committee of Unsecured Creditors for an Order Compelling the Debtors to File Chapter 11 Petitions for Non-Debtor Subsidiaries [Doc 542], which are fully incorporated herein by reference.

PRIOR RELATED RELIEF

11. On June 9, 2014, the Subsidiary Debtors filed their Expedited Motion for Interim and Final Approval of Debtors' Application to Employ DelCotto Law Group PLLC as their General Local Counsel Effective as of the Relief Date [Doc 29] (the "Original DLG Employment Application"), which requested that DLG be employed in the Subsidiary Debtors' bankruptcy cases on the same terms as those set forth in this Application for DLG to be employed in the Additional Debtors' bankruptcy cases. On June 16, 2014, the Court entered an Interim Order [Doc 122] approving the Original DLG Employment Application on an interim basis and authorizing the Subsidiary Debtors to employ DLG from the Subsidiary Relief Date through the date of entry of a final order on the Application.

12. On June 23, 2014, the Jointly-Administered Debtors file their Expedited Motion for Interim and Final Approval of Application to Employ DelCotto Law Group PLLC as General Local Counsel for U.S. Coal Corporation Effective as of the Relief Date [U.S. Coal Doc 20]

(the “USC DLG Employment Application”), which requested that U.S. Coal be authorized to employ DLG on the same terms as set forth in the Original DLG Employment Application.

13. On July 14, 2014, the Court entered Final Orders Authorizing the Employment of DelCotto Law Group as General Local Counsel for All Debtors [Doc 284; U.S. Coal Doc 81] (the “Original DLG Employment Order”), which approved both the Original and the USC DLG Employment Applications and authorized all of the Jointly-Administered Debtors to retain and employ DLG as their general local counsel effective from the Relief Dates through the pendency of their bankruptcy cases.

RELIEF REQUESTED

14. For purposes of consistency among the Jointly-Administered Debtors’ bankruptcy cases and the Additional Debtors’ bankruptcy cases, the “Relief Requested” section in this Application is substantially the same as the “Relief Requested” section in the Original DLG Employment Application, with the exception of added references to the Additional Debtors which have filed voluntary Chapter 11 petitions since the filing of the Original Application. However, interested parties are encouraged to read both pleadings as they evaluate the relief requested in this Application.

15. The Additional Debtors desire to employ DLG to serve as their general local bankruptcy counsel in connection with the commencement and prosecution of their Chapter 11 cases. The Debtors have been advised by DLG that they will not be able to take all actions necessary to represent the Additional Debtors until such time as their employment is approved. This Court has already approved DLG’s employment by the Jointly-Administered Debtors on the same terms as proposed herein. Pursuant to 11 U.S.C. §§ 327 and 328, the Debtors request that this Court approve the employment of DLG as local counsel for the Additional Debtors under a

general retainer to perform the extensive legal services that will be necessary during their Chapter 11 cases.

16. The Debtors selected DLG as their attorneys because of the Firm's experience and knowledge in the fields of debtors' and creditors' rights and business reorganizations under Chapter 11 of the Bankruptcy Code. The Debtors believe that DLG is well qualified to represent all of the Debtors in their Chapter 11 cases in an efficient and timely manner.

17. The services of DLG as local counsel under a general retainer are necessary to enable the Debtors to execute faithfully their duties as Debtors and Debtors in Possession. In order to preserve the value of the Additional Debtors' assets and operations, legal representation is crucial for the Additional Debtors to obtain immediate relief on important first-day issues; to assure compliance with the Court's operating order; and to represent the Additional Debtors at the initial debtor interview and meeting of creditors. Subject to further order of this court, DLG will render the following professional services:

(a) Take all necessary action to protect and preserve the Estates of all of the Debtors, including the prosecution of actions on the Debtors' behalf, the defense of any actions commenced against the Debtors, negotiations concerning all litigation in which the Debtors are involved, and objections to claims filed against the Estates;

(b) Prepare on behalf of the Debtors, as Debtors in Possession, necessary motions, applications, schedules, statements, answers, orders, reports, and papers in connection with the administration of the Estates herein;

(c) Negotiate and prepare on behalf of the Debtors, a plan or plans of reorganization and all related documents; and

(d) Perform all other necessary legal services in connection with the Debtors' Chapter 11 cases.

18. DLG has stated its desire and willingness to act as general local bankruptcy counsel in the Additional Debtors' bankruptcy cases and to render the necessary professional services in accordance with the terms set forth herein, subject to approval of its employment by the Court and approval of acceptable "carve-out" arrangements for payment of its allowed fees and expenses.

19. The Additional Debtors also intend to retain Nixon Peabody LLP ("Nixon Peabody") as general bankruptcy counsel. Due to the nature and complexity of these cases, both the services of DLG and Nixon Peabody are necessary. DLG and Nixon Peabody will function cohesively to ensure that legal services provided to the Debtors by each firm are complementary, rather than duplicative.

20. To the best of the Debtors' knowledge, the attorneys of DLG do not have any connection with the Debtors, their creditors, any party in interest, or their respective attorneys, except as specifically set forth in the Affidavit filed herewith.

21. It is necessary that the Additional Debtors employ attorneys as local counsel under a general retainer to render the above-referenced professional services. DLG has received \$100,996.35 for services rendered and expenses incurred prior the Subsidiary Debtors' filing of their respective Consolidated Answers and Consents to Entry of Order for Relief and Reservation of Rights [Doc 8] (the "Subsidiary Answer").³ DLG has applied the sum of \$65,071.40 to the fees and expenses incurred prior to the filing of the Subsidiary Answer, and it holds the remaining balance of \$35,924.95 in escrow (the "Retainer").

³ This is the ECF number for the Subsidiary Answer filed in the main case of Licking River Mining, LLC, Case No. 14-10201. Identical Subsidiary Answers were also filed in each of the other Subsidiary Debtors' bankruptcy cases.

22. DLG intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and the Local Rules and Orders of this Court.

23. Subject to the provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and Orders of this Court, DLG proposes to charge its customary hourly rates for matters of this size, nature, and complexity, as set forth in the Affidavit, which rates may be increased in the ordinary course of business during the pendency of these cases. These are the same rates contemplated in the Original DLG Employment Application, and the Additional Debtors believe that these rates are fair and reasonable.

24. Against this background, the Debtors respectfully request that the Court authorize the Additional Debtors to employ DLG on an interim basis following a hearing on this Application, and that any interim order approving this Application provide that it will become a final order unless any objections to said interim order are filed within fourteen days of the entry of said order. Good cause has been shown for the entry of an order authorizing DLG’s employment by the Additional Debtors on an interim basis. The entry of such an interim order is necessary to avoid immediate and irreparable harm to the Jointly-Administered Debtors’ and the Additional Debtors’ operations, their creditors, and other parties in interest. An interim order will allow the Additional Debtors to have the competent legal representation needed to maintain their operations and preserve their assets at the outset of their bankruptcy cases, pending the final approval of DLG’s employment, which will maximize recovery to all creditors. Immediate and irreparable harm may occur if proposed Additional Debtors’ general local counsel cannot act

while approval remains pending for the first twenty-one days of the Additional Debtors' bankruptcy case, an especially busy time period for any Chapter 11 case.

WHEREFORE, the Debtors respectfully request entry of an order:

1. Approving the Additional Debtors' retention of DLG as general local bankruptcy counsel, pursuant to 11 U.S.C. §§ 327(a) and 328(a), on an interim basis from the commencement date of the Additional Debtors' bankruptcy cases through the earlier of the date that such interim order becomes a final order or the date of a hearing to consider any objection to such interim order;

2. Authorizing DLG to hold the Retainer in its escrow account pending further orders of this Court;

3. Subject to the terms of any cash collateral order, authorizing and directing the Additional Debtors to deposit the monthly carve-out amounts designated in the cash collateral budgets into DLG's escrow account, to be held for its fees and expenses as may be allowed by further orders of the Court;

4. Providing that if no objection to said order is filed within fourteen days of the entry thereof, then the order shall become a final order without further hearing or order of the Court, and the Additional Debtors shall be authorized to employ and retain DLG as set forth herein on a final basis from the commencement of the Additional Debtors' bankruptcy cases through the pendency of those cases; and

5. Granting the Debtors such other relief as is just and proper.

Dated: November 3, 2014

LICKING RIVER MINING, LLC

By: /s/ John A. Collins

Title: CEO

LICKING RIVER RESOURCES, INC.

By: /s/ John A. Collins

Title: CEO

S. M. & J., INC.

By: /s/ John A. Collins

Title: CEO

FOX KNOB COAL CO., INC.

By: /s/ John A. Collins

Title: CEO

J.A.D. COAL COMPANY, INC.

By: /s/ John A. Collins

Title: CEO

U.S. COAL CORPORATION

By: /s/ John A. Collins

Title: CEO

HARLAN COUNTY MINING, LLC

By: /s/ John A. Collins

Title: CEO

OAK HILL COAL, INC.

By: /s/ John A. Collins

Title: CEO

SANDLICK COAL COMPANY, LLC

By: /s/ John A. Collins

Title: CEO

U.S. COAL MARKETING, LLC

By: /s/ John A. Collins

Title: CEO

Respectfully submitted,

DELCOTTO LAW GROUP PLLC

/s/ Amelia Martin Adams, Esq.
KY Bar No. 93038
Laura Day DelCotto, Esq.
KY Bar No. 81763
200 North Upper Street
Lexington, KY 40507
Telephone: (859) 231-5800
Facsimile: (859) 281-1179
aadam@dlgfirm.com
ldelcotto@dlgfirm.com

and

NIXON PEABODY LLP

/s/ Dennis J. Drebsky, Esq.
NY Bar No. 4350633
Christopher M. Desiderio, Esq.
NY Bar No. 1181007
437 Madison Avenue
New York, NY 10022-7039
Telephone: (212) 940-3000
Facsimile: (212) 940-3111
ddrebsky@nixonpeabody.com
cdesiderio@nixonpeabody.com

COUNSEL FOR JOINTLY-
ADMINISTERED DEBTORS AND
DEBTORS IN POSSESSION

COUNSEL FOR
ADDITIONAL DEBTORS
(UNDER PENDING APPLICATION)